



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 219 and 252

[DFARS Case 2009-D002]

RIN 0750-AG40

Defense Federal Acquisition Regulation Supplement; Electronic Subcontracting Reporting System

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule, amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to the FAR regarding policy and procedures related to the Electronic Subcontracting Reporting System.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**.]

FOR FURTHER INFORMATION CONTACT: Lee Renna, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6095.

SUPPLEMENTARY INFORMATION:

I. Background:

DoD published an interim rule in the Federal Register at 75 FR 65439 on October 25, 2010, to amend section 219.708, clauses 252.212-7001, 252.219-7003, and 252.219-7004, and sections I-105 and I-112 of Appendix I, to provide DoD-specific procedures and policies related to the Electronic Subcontracting Reporting System (eSRS). There were no comments received in response to the interim rule. Accordingly, the interim rule amending 48 CFR Parts 219, 252, and Appendix I, is adopted as a final rule with only minor technical changes at 219.708.

II. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses are not required to have subcontracting plans and, therefore, are not required to use eSRS to submit reports on their progress in achieving the goals in those plans.

IV. Paperwork Reduction Act.

This final rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 35). This rule provides DoD instructions on how to submit reports that are already required by the FAR and are covered under Office of Management and Budget Clearance Numbers 9000-0006, Subcontracting Plans/Individual subcontract Report (SF 294) and 9000-0007, Summary Contract Report.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Kortnee Stewart,

Editor, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 219 and 252, which was published in the **Federal Register** at 75 FR 65439

on October 25, 2010, is adopted a final with the following changes:

PART 219—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41. U.S.C. 1303 and 48 CFR Chapter 1.

2. Section 219.708 is amended by revising paragraph (b)(1) to read as follows:

219.708 Contract clauses.

(b)(1)(A) Except as provided in paragraph (b)(1)(B) of this section, use the clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts)--

(1) In solicitations and contracts that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(2) With its Alternate I in contracts that use Alternate III of 52.219-9, Small Business Subcontracting Plan.

(B)(1) In prime contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, use the clause at 252.219-7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small Business Subcontracting Plan.

(2) However, also include in the prime contract, solely for the purpose of flowing the clauses down to subcontractors --

(i) FAR clause 52.219-9, Small Business Subcontracting Plan, and 252.219-7003; or

(ii) When the contract will not be reported in FPDS (see FAR 4.606 (c)(5)), FAR clause 52.219-9, Small Business Subcontracting Plan with its Alternate III and 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) with its Alternate I.

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